

COURT OF APPEALS
DIVISION TWO

¶1 Pursuant to a plea agreement, petitioner Alfonso Frago was convicted of aggravated driving while under the influence of an intoxicant (DUI) while his driver's license was suspended, revoked, or restricted, a class four felony. After Frago admitted he had two prior felony convictions, the trial court sentenced him to the presumptive, ten-year prison term, the minimum sentence permitted by law. *See* A.R.S. § 13-604(C). After appointed counsel notified the trial court she was "unable to find any arguably meritorious legal issues to raise" in a post-conviction petition, *see* Rule 32.4(c)(2), Ariz. R. Crim. P.,

Fragoso filed a pro se petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The trial court summarily denied relief, and this petition for review followed. We will not disturb a trial court's denial of post-conviction relief absent a clear abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Fragoso argues, as he did below, that because his conviction arose from a traffic violation pursuant to A.R.S. § 28-1383, the trial court erred by treating it as a felony, thereby subjecting him to an enhanced sentence because of his two prior felony convictions. In its ruling denying Fragoso's petition for post-conviction relief, the trial court stated, "[t]he essence of [Fragoso's] argument is that the sentencing enhancements for repeat offenders codified in Arizona's criminal code (Title 13 of the Arizona Revised Statutes) do not apply to traffic offenses proscribed by the transportation code (Title 28)."

¶3 Entry of a guilty plea waives all nonjurisdictional defects, such as the claim Fragoso asserted in his pro se petition. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). But even assuming *arguendo* Fragoso's claim could be construed as jurisdictional in nature or that it otherwise was not waived, the trial court did not abuse its discretion by denying relief because the claim lacks merit. As the trial court correctly noted, A.R.S. § 28-1383, the statute under which Fragoso was convicted, classifies an aggravated DUI as a felony offense. *See* A.R.S. § 28-1383(L). And as the trial court also noted, our supreme court previously addressed and rejected the very argument Fragoso has raised here: whether driving offenses that are felonies under Title 28 are exempt from the sentence enhancement provisions of Title 13. *See State v. Campa*, 168 Ariz. 407, 410, 814 P.2d 748, 751 (1991). Concluding they are not, the supreme court reasoned as follows.

The general sentencing provisions of the criminal code, therefore, apply to *all* crimes, whether defined in Title 13 or elsewhere. Likewise, § 13-604 applies to *all* felonies, whether defined in Title 13 or elsewhere. The language of the statutes evinces a legislative intent that *all* felonies are subject to the enhancement provisions of § 13-604.

Id.

¶4 Fragoso also suggests, as he did below, that trial counsel was ineffective for failing to challenge the imposition of an enhanced sentence and that his guilty plea was involuntary as a result of counsel's conduct. However, because Fragoso's underlying claim is without merit, the related claim that counsel was ineffective likewise fails. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985) (to establish claim of ineffective assistance of counsel, petitioner must show counsel's performance fell below prevailing professional norms and prejudiced petitioner). Although the trial court did not specifically address this claim in its ruling, based on the court's denial of any post-conviction relief, we can infer it also denied this claim.

¶5 Accordingly, although the petition for review is granted, relief is denied.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge